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### MISCELLANEOUS.

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#### General View of our Indian Army.

To the Editor of the Asiatic Journal.

Sir,

As some of the readers of your interesting Journal seem to attribute the Summary of the Maharatta and Pindarree Campaigns to the pen of a King's Officer, and thereby, not very liberally on the score of professional jealousy, detract from the merits of that publication, if it can lay claim to any, I think it proper to inform you that I am not, nor ever was in his Majesty's Army, an honour I should at all times be proud of sustaining; nor am I, as "A Bengal Officer" presumes, Lieut. Col. Batty. I am a Madras Officer in the Company's Army; have served much with Native Troops, indeed more so than with Europeans; with Bengal sepoys, Malay troops, King's and Company's European troops, and have seen active service with the whole of the above, separately or collectively, on various and pressing occasions during the late campaign in India.

The remarks I thought proper to offer to the public were not founded on prejudice, haste, or disappointment: I thought I observed in our Native Army, too generally, the absence of those essential qualities without which men cannot be soldiers; I mean bravery and bodily strength. It is only in active service that we can see the real strength and value of soldiers; and I have no reason, on reflecting upon the strictures I made, to change my mind as to the state of our Native Army. I am not ignorant of the language, habits, and even of some virtues which attach to our sepoys, in quarters and in the field; but that which I would dwell upon, and still urge to those whose province it is to correct the evil, is the introduction and maintaining of so many men, entirely unfit, from physical causes alone, for military life; altogether waving the question of their moral inaptitude.

The "Bengal Officer," who has honoured my work with his comments, in your Journal for August last, entertaining the idea that Lieut. Col. Batty was the author of it, lays particular stress upon my prejudices against the Native Army. He appeals to the high authorities of Clive, Coote, Cornwallis, Wellesley, and Hastings; insists upon it that there are not better troops in the world, and brings forward the old bludge and plaything of the Bengal Army, the flight of the 101st regiment at Cuddalore, and the refusal of the 76th regiment to advance from the trenches at Bhurtpore, when a battalion of Bengal sepoys did so, and shewed them the way. The gallant old officer must have forgotten, for a moment, the charge of indelicacy he had advanced against me for my account of the Talnair affair (to which I spoke from personal observation on the spot, and involving only the conduct of one individual), when he himself, on mere hearsay, and without occasion for it, brands two regiments of his Majesty's army with disgraceful conduct; and one of these regiments that very corps to which, without exception, the Bengal Army owe their proudest laurels, and than which (the 76th) there is not a more meritorious corps in his Majesty's service. But I hope, with regard to Talnair, that the gallant officer is as well aware as I am, now that his called-for papers have reached home (and on which head he thought I acted indelicately as those papers had been called for), that all is not strictly to the truth that comes home, even in a public shape: and that some of our agents, in that quarter, are not nicely scrupulous as to facts, where the development of such might prejudice their own views or interests. An observation of Dr. Johnson's which the gallant officer will find (in Boswell's life) respecting Warren Hastings's trial, will bear good in every inquiry or prosecution against public offenders in India. I think the above great man remarked, on that occasion, "the distance of India from England, opportunities of friends and money, the difficulty of getting at the truth, will save him (W. Hastings):" and they did so.

But, even now that Sir T. Hislop's account and explanation of the calamitous affair at Talnair have arrived, I believe the simple statement I gave of that transaction stands uncontroverted; and certainly palliates the error, not to say the crimes, of that distinguished officer, more than the heap of his Madras correspondence that has been laid before the Public.

But to resume our subject of the Native Army; I wish the gallant officer, instead of speaking in general terms coupled with high names and authorities (but the whole of these, by the bye, being in his Majesty's service), had quoted instances of single or united bodies of Native troops, not acting in concert with Europeans, where, meeting with a stout opposition or severe loss, they shewed themselves so triumphantly victorious. Retracing our first steps under Lawrence, Coote, and the other great men above-mentioned, he will find, that, whenever the brunt was to be borne, the defence of any place obstinate, or the shock of the enemy powerful, it was levelled against and sustained by our European handfuls; and that it was generally the blood of these which marked the exact spot of the most desperate attempts and assaults of the enemy. On the Coast, witness Lieutenant M'Leod's regiment against Hyder Ally; the battles of Bangalore, Seringapatam, and Assaye; the importance of the handful of Europeans at Mahidpore; the consequence attached to them by General Doveton (an old Company's officer) at Nagpore, where he placed a weak company of the Royal Scots at the head of each Native corps (the light corps excepted); and the gallant assault of Cornelis on Java. On the Bengal side, peruse, in the earlier stages, the high encomiums bestowed upon the Company's European troops (for at that time there were few King's corps in India) by Lord Clive, and the battles of Plassey and Laswarree. In all these engagements the European portion bore the greatest share of the danger and the carnage. The Native corps, of course, must have had their share when acting in the same line, or in support of the Europeans; but will the gallant officer inform me of a single instance, where, it being necessary to strike a blow, to head an assault, or to carry a breach, any of our commanders, having at hand European troops, ever employed Native troops on such occasions? And if we examine our most fatal enterprises and retreats in India, those, for instance, of the Bombay and Bengal armies, some years back, we shall find the want of confidence to stand and oppose the enemy, to have been occasioned chiefly by the scarcity of European troops. On one of the above occasions, where there were no Europeans at all, the flight was general, the confusion was thick; and those who saved themselves came in by dozens for weeks afterwards, naked as they were born, half starved, and without their arms.

Indeed I have myself witnessed so many striking instances of the unsteadiness of Native troops, and the evident want of confidence in them manifested even by their European officers, that I should set down any man, even the gallant officer himself, as shutting his eyes obstinately to conviction and experience, or closing his farewell account with his reason, who should calmly place in comparison any Native corps with a European one. My own opinion is, that even when complete with European officers, three Native corps might be equal in effect and weight to one European regiment; but without European officers I am pretty well convinced that a European regiment would disperse six of them.

As to the instances adduced of the Native corps at Nagpore and Corygawm, had it not been for the extraordinary nerve and exertion of the European gentleman and officers, both places would have been carried after the first few hours' firing and assault by the Arabs. The sepoys generally became panic-struck and dispirited; and the few poor fellows of officers had as much to do to keep their men to the stand, by exhortations, menaces, and beat of drum, as they had in opposing the enemy.

For my own part, in the later war, I have witnessed occasions, when being on duty with European and Native troops, I could most willingly have dispensed with the latter altogether. I found it not only difficult to draw them from the trenches for the ordinary reliefs of sentinels, (a fact known indeed to many officers of Lieut. Col. A. McDonald's detachment, is, that we were frequently obliged to use force to both Native officers and sepoys), but as uncertain and difficult to make them keep their posts, even in the absence of immediate danger; and when this occurred, the confusion was sure to take its rise in the quarter of our Native troops. A striking instance of this happened on the evening of the capture of the Pettah, in which were posted between six and seven hundred Native troops with their European officers: there were only fifty Europeans on the same duty,—a false alarm was given,

—confusion commenced,—the whole of the Native troops kept up a fire on every side,—the European officers lost all command over them, and they were at length obliged to seek for safety amongst the fifty Europeans for the evening: and such was the consequence attached to this handful of our countrymen, that the field officer (since deceased), in the Pettah, remonstrated against withdrawing the fifty Europeans, in whom alone he had confidence; but being successful in his application, he urged privately to the officer commanding the detachment of Europeans in the camp, to let him have any complement, however small, to serve as a rallying point for himself, his officers and his men; and he obtained at length twenty Europeans.

The fact is, unless in concert with European troops, any complement of Native troops for desperate or smart service, is unequal to it; and it is on this account that such a stress is always laid upon the least shyness or disaster amongst the Europeans, as if it were that all eyes and expectations were fixed upon these alone, while the most prominent misbehaviour or backwardness is glossed over for the Native troops, and by a happy facility of bombast and penmanship, too prevalent in that country, the discredit is not only palliated or removed, but very frequently turned to the very reverse of their actual merit. This occurred in the late Goorkah war, when an entire battalion of Bengal troops, under Major L., on the heights of Naun, advanced in support of a small leading column of half the grenadier company of his Majesty's 53d, and a detachment of light infantry; but, perceiving the stout resistance of the enemy, and the confusion of the advance, the whole battalion to a man, turned right about, and never drew up until they had reached camp, leaving several officers and men killed, wounded, and prisoners in the hands of the enemy. The Major nevertheless was commended, and the Native battalion commiserated in government orders. The failure was attributed to the precipitance of the Europeans, but the real cause of it rested upon the disobedience of the Major, in having exceeded the express orders and limits enjoined by the General (M.) commanding.

A failure in the same wars by a few companies of his Majesty's service, and a regiment that had more than its share in that most harassing kind of warfare (hill-fort-taking), was blazoned through India as a reflection on the whole body, a public reprobation held over them, though somewhat indirectly, and followed by an unhappy inquiry, and dissension through the whole regiment.

I am well aware that the exposure or revival of such mishaps, in one service or the other, is an unpleasant and an invidious task; but we have a great stake in India; and it is the duty of every man, connected with the British interest or Army, to speak to those evils which exist in any branch of that service, and to surmise what may appear to him to be the best corrective.

The Company's Native Army is deficient in three prominent characteristics: want of the complete number of European officers,—ignorance and unfitness of the Native officers for the duties and responsibility of their situations,—and the want, particularly on the Madras and Bombay sides, of men fit for the purposes of war or of military life.

If the competent authorities would transmit general instructions to India, to discharge from the service, or otherwise provide for, every soldier in the Native army, whose weight, stripped of his clothes, shall fall short of eight stone, they will find by the returns, in the absence of some hundreds of tons, great room for the substitution of weightier bodies, and consequently for a nearer correspondence to those arms sent out for their service. They should either do this, or reduce the size of the military accoutrements to the fitness and vigour of those intended to use them. We may assign as one cause of the smallness of the sepoys on the Madras side, the system observed, on that establishment, of maintaining sixty or seventy boys, the children of sepoys, in each battalion, who are kept, from the age of nine and upwards, until they are passed as fit for the battalion, on a pagoda a month. This has its bad consequences, as well as its advantages. It holds out to meritorious and old sepoys a provision for their children, and thereby attaches them to the service; but, on the other hand, it precludes, in a great measure, competition, and the hope of obtaining better and stouter youths, unconnected with the army, who, did not this difficulty and jealousy of strangers coming amongst the sepoys exist, might be disposed to accept our bounty and provision. To this we may add the general physical inferiority of the Madras troops; and that therefore, instead of being at the expense of propagating so delicate a class of people, we should endeavour gradually to introduce men of a better and harder race. Few men from Hindoostan will enter the southern armies of India from the dearth and inferiority of provisions, coupled with the severity of discipline, employed particularly amongst the Madras troops.

It is on this account, amongst others enumerated by me in the Summary, that I should, on that establishment particularly, advise the introduction of a different class of troops, Arabs, Seedees, Malays, &c. &c., and that they should be disciplined exclusively by officers of his Majesty's service.

The veteran officer (my commentator) also objects to the introduction of any other Asiatic class of troops than the sepoys, on the ground that it would excite factions, jealousies, and alarm in our Native army. For myself, disposed always to pay a rigid attention and regard to the religious ceremonies and prejudices of the sepoys, I should be the last to give them any cause of alarm on that head; but, nevertheless, I would not indulge them in all the absurdities and fanciful severities of their castes, when interfering with the fair and ordinary discharge of their duties. We should respect their castes, but not descend with them to the indulgence of the merest childishness—of things not meant or demanded by their faith, but assumed and imposed upon our weakness and mistaken liberality. The Bengal pioneers (of little use on any service) refused in Java to bury the dead or the horses, &c. At the Isle of France the Bengal sepoys sulked, and refused to pull the guns; they were found stretched by dozens along the road, calling out, and complaining of want of water and food, piteously appealing to their officers, whom, by the bye, in any distressing case, they generally address by the title of "father," "mother," "sister," and even "Aimig' ty," instead of employing that respectful and firm tone that should characterize a soldier. Whilst the Madras 6th and 12th Native Infantry scarcely left a man in the rear, and kept pace with the Europeans, the Bengal troops to the eastward could with difficulty be induced to carry away their own provisions from the stores to their barracks, and these provisions granted them gratis by the government: and this slovenly disposition, I am sorry to say, but too commonly met the countenance and support of their European officers.

This habit of luxurious and easy life amongst the Bengal troops, officers and men, renders it more difficult to set one of their battalions in motion than it would be to put on the march five Madras ones. Lieut. Col. A. (C. B.) on the preparations to take the field, in December 1818 and January 1819, against Appah Sahib, acknowledged himself, that his detachment of Bengal troops was unable for three weeks to move, because the officers had not cattle for their baggage, and consequently he could not join in the line of operations with Lieut. Cols. Scott, Popham, and Pollock. During the passage of the Bengal veteran battalion to Java, under Major P. G., three sepoys starved themselves to death, although there were thirty-three different articles of provision on board for them, because the superior in cast, a Brahmin, being sea-sick, refused to sanctify their food by his touch. Another sepoy complained that he had no vegetables, and could not eat without them; and was with difficulty appeased and prevailed upon not to die.

The Native Army of Madras, by a long series of hardships, and some smart lessons, has at length been reduced to a hardy and proud sense of what feelings soldiers should possess, to enable them to support privation with patience and cheerfulness, to march for days and days together with a few dried cakes and a little water; not to shudder at the sight of their officer, or any Europeans, should they approach them whilst eating; not to fall into fits at the sight of a pig or a piece of pork on board a ship, or to turn pilgrims and go naked, because they are ordered to do their duty, and are tired of it.

But to resume the subject of a new class of troops: mixed troops would be, in my opinion, the very thing for India, particularly for our Asiatic Army. The fewer foreigners we have in our European army the better; but in the Native Army we should mix all descriptions of castes as much as possible, if not to break the link of possible combination, at least to disturb and perplex it. By having corps of different castes and countries, we should give each of them an opportunity of emulous enterprise in action, which probably could not be effected amongst them at present, on a large scale, from any sense of duty or attachment to us. During the late Travancore war, and in that of Ceylon, the Madras and Ceylon corps served together: there was not any striking jealousy amongst them; they vied with each other in handsome achievements; and the only dislike the sepoys had to the Cingalese, was, their eating every thing as ourselves: whence they designated them the Black Christians, "Kala Feringhee." The Duke of Wellington, at the battle of Waterloo, foresaw the advantages of distributing the Belgians and the other allied corps throughout his line, where they could not behave well without being observed, nor misbehave without being corrected and recovered.

As to the Native Army, whenever we review it, there starts up difficulty after difficulty as to what is best to be done towards its reform and improvement: one thing, however, is decisive as to the inferior ranks, that unless our sepoys possess the common physical properties of men, they cannot by any art, discipline, or attention, be made really good soldiers. In that material the Coast and Bombay troops are essentially wanting; and I again repeat, that two hundred men from each battalion of those, and one hundred from each Bengal battalion, excepting the light corps, may be struck off the Indian Army, without any sensible detriment to the real weight and efficiency of it. Substitute for these, troops of harder race and character; in this substitution forget and abandon altogether the intermediate class of Native commissioned officers, and give the above transfer to the King's Army. This will remove all jealousy amongst the Native troops, and will



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insure a more strict and uniform discipline, with the complete establishment of European officers.

Recruiting from the Persian Gulph, from Mukran, and Sindh, is a thing practicable enough on the Bombay side, where I am sure we could obtain abundance of men by offering proper encouragement to the Arabs and other merchants in that quarter, and at a rate not much exceeding the expenses of our present depot and recruiting establishments in Hindostan and elsewhere.

The Arabs, Seedees, and others, until the termination of the late war, came down to Bombay by hundreds in the trading vessels. They did not require the luxuries of a Hindoo, or our Mahomedan ship equipment; they brought, as hardy adventurers, only their clothes and daggers with them; but they brought what was more valuable, and what all our flattering of the insipid race of Hindostan can never best, hardly and robust frames, with hearts as tough as those of any of our Europeans. They never dreaded us, never avoided us, and very frequently worsted us; and this too, frequently, without any reasonable hope of relief or immediate object; frequently straitened in provisions, and sometimes even stinted in ammunition. I myself witnessed these troops twice dash from the posts even against European troops, in a style that could not be surpassed by ourselves. I have seen them swept by dozens off their battlements by our grape-shot, whilst stoutly maintaining their works.

But, Sir, we are too fond of the amiability and gentleness of the Hindoo; we are partial to child's play in that country, partial to exaggeration and bombast.

I sincerely hope that the day is yet distant when we shall be called to oppose our Native troops to those of the North: for my own part, I feel unhappy whenever I reflect upon the subject; we have yet however much time to look about us, and to strengthen the sinews of our military body. War or revolutions can never surprise us in any desperate shape whilst we are the sole masters of India; our justice and moderation, exercised with firmness, will always dissipate every minor cloud or darkness of our own immediate atmosphere: but the moment the horizon thickens from the West, however, in the intermediate time, we may conduct or amuse ourselves with the follies and weakness of our Native Army, let us not rest any material portion of our strength, on arduous occasions, upon them; for, as the Ancients found them, and as we found them, so shall we again find them, too hollow in heart and nerve ever to derive much benefit from them.

As to the Native officers of the army, these men, in nine cases out of ten, untutored and ignorant of our language or of any other, are entirely unfit for the responsibility or duties that generally attach to the designation of officers: they are mere handles by which the European officers may better conduct the duties of their corps; and probably the only virtue to be ascribed to that rank is its holding out, to the Native army at large, some little opening of advancement, and offering some apology for the entire supplanting of their natural pretensions in our extended and absolute capacity of their rulers.

As I have observed before, the introduction of that class into our Native Army was faulty; but the measure is never too deeply rooted to be revoked. What we should turn our attention to at present should be, to endeavour to render them, by education, more fit for their duties as officers. By this they would set themselves above the mass of their regiments; they would become more closely connected with the European officers, and would regard the British Government, not, as they do at present, with an eye of jealousy and dread, but with a conviction, impressed by a knowledge of our superiority, that it is more conducive to their advantage than to our own.

A striking instance of the incapacity of these men, in their present training, to judge or decide upon any measure requiring the least deliberation, was published a few days ago in an English Paper. I allude to the proceedings of a Native General Court-Martial in Bengal, wherein a sepoy was arraigned for the murder of a woman kept by him. The evidence, as the Marquis of Hastings observed, established the guilt of the prisoner in the fullest way: nevertheless she was acquitted of murder, and was found guilty of homicide, and was sentenced to six years imprisonment: so extravagant a sentence, as the above great personage remarked, as to render it impossible to confirm the proceedings. Now it must be recollected that this judgement and sentence was given even with the aid of a European officer, acting as an Interpreter and Judge Advocate, and therefore we may fancy what a bundle of stuff they would have made of it, if directed to enter and report their own proceedings. Hence, in any case embracing two features, or requiring attention to two points, evidence for and against a prisoner, a court of Native officers, unless directed by the judgement of a European officer, will be found as fit to decide upon it as they would be to fill one of his Majesty's benches.

We can never, therefore, depend upon such men or minds being attached to us from principle: they would too quickly become a prey to

any contending or intriguing party against us. The Mahomedan hates us from his creed, for our superiority; the Hindoo is attached to us for our care of him, and from his own cupidity: from both we have experienced plots and defections, at Travancore, Java, and Nagpore, and in the Bombay army in 1817, not from any provocations or wrong on our parts, but from their hearts—their jealousy and distaste of us.

Opposed to the plan of instructing in the English language the Native officers of the Army, is the apprehension of their learning too much from us, and of its becoming too general through the country, thereby giving them a chance of imitating too closely our policy and prudence, possibly for the undermining of our interests in that quarter. We must at once admit that our conquest of India was, through every struggle, more owing to the weakness of the Asiatic character than to the bare effect of our own brilliant achievements; and empire after empire rolled in upon us when we were merely contemplating the protection of our trade, or repelling insult. Kingdoms have been vacated for us, as if by magic spell; and on the same principle we may set down as certain, that whenever one-twentieth part of the population of India becomes as provident and as scheming as ourselves, we shall run back again, in the same ratio of velocity, the same course to our original insignificance. But in the course of instruction that I would recommend for those destined as Native officers, we should have little to apprehend from their competition with us in our own language, or indeed in any description of learning! They may attain a certain length, but can never reach beyond it. We should merely endeavour to qualify a little their present stupidity and almost total absence of reflection; to bring them to lean somewhat towards our views of things and our system. This would elevate their pride, and would be the means of establishing a closer confidence between our countrymen and themselves. This, I presume, might be done without incurring the slightest danger as respects our footing amongst them.

I shall conclude with a few general remarks on our state in India, its constitution, army, &c. The monopoly of the Company, in its character of a Government distinct from that of the Mother Country, has in it, with many other leading political considerations, the peculiar one of excluding every attempt at Colonization; which, if it did not in the course of some years altogether destroy our authority in India, would disseminate such factions, and such combinations of interests and power in that quarter as would leave the tenure scarcely profitable to us, and would expose the Natives of that vast country to the unceasing and too frequently bitter effects of revolution. At all events, in the present state of India, in the low and uninformed culture of the human mind there, in the weakness and submission of its humble inhabitants, exposed to, and easily assailable by the designs and practices of their Northern visitors, no calm mind will question for a moment the fitness of that form of government at present adopted by us over them. We have given them, in a body, what the very happiest of them never enjoyed before in a single state;—certain security of their lives and properties. There are other invaluable blessings, and such as under a more divided state of government, under new or aspiring leaders or experimentalists, under a proud or lawless innovation, they could never obtain with any hope or prospect of duration.

By means of our wise and mild administration of India, through the monopoly of the Company, we do not awaken those uneasy and feverish spirits of Great Britain, who, always busy in speculation, though possibly with good motives, would undo our best labours there, and plant in India a system of European government which that soil will never be fit for. Let us leave, therefore, the monopoly of India to the Company, together with its patronage, giving, of course, a wider and more liberal range to the fair pretensions of our country: this, no doubt, in due time, will find its own limits and profits. Let us also continue the Indian Army to the Company, with its patronage to appointments; but throwing as much as possible its discipline, control, direction, and dependence for honours and rewards, upon the Crown directly. The sub-division, that is, the separation of interests in so unwieldy and great an Army, is wholesome: and those who would advocate the transfer of the Indian Army to the King, will do well to reflect upon the possible contingency of too close a combination of interests and views in so material a part of the Indian Constitution; which although not likely to create any height of alarm, or be guilty of defection from the Mother Country, still its predominant character of a great and united Army, might one day, from a too busy attention to or vindication of pretensions, obtain an ascendancy, and dictate its own terms to the Civil Authorities. The King's and Company's Armies have at present separate prospects and interests: that of his Majesty resting and maintaining their sole correspondence, as to its internal state and economy, on the Mother Country; not having any immediate interest in India beyond being sojourners there, and merely acting as a subsidiary body looking to rewards and advancement from home, complete in officers and efficiency; and, as I before observed, the very hinge and corner-stone of our whole military fabric. The Company's officers have exclusive privileges of their own, in regard to the pension and

the staff (which, however, should be modified in favour of his Majesty's army); they are destined to serve in India alone, and depend upon the Company for their ultimate provision, after a certain service. Let us, then, not too hastily or rashly alter this general condition of the Indian Army. *Divide et impera* should be the motto for our Indian administration, whether political, civil, or military. Our present form of government in India bears a close analogy to that of the Mother Country (the first in the world), in the three estates of the Board of Control, the Directors, and Proprietors, which may be regarded in the light of King, Lords, and Commons. So long as the first Board, composed of the leading and wisest men in the nation, maintains a minute and controlling superintendence over the inferior estates we need not be alarmed, in any serious degree, for the internal stability of India; and by a timely correction and improvement of our military strength, we may be enabled, should events demand it, to maintain a tougher tug of war even against external assault.

I have now trespassed too long upon your time. My absence from England, and ill-health, have hitherto prevented me from seeing or paying attention to the comments on my Summary of the Pindarree Campaign; and it was only in Paris that I had the opportunity of attentively observing them. My object has not been a pecuniary one; indeed it promises the reverse: nor has it been directed by ambition; as I believe so plain spoken a man is seldom a favourite with the great. My only object was to place matters in their true colours and light; to tell the people of England not to be hurried away by our conquests in the East; they are neither so profitable nor so likely to be durable as we imagine. Every day in that country must increase our expense and our military force; as the people become wise we must become strong, and danger must grow out of too much strength; I mean, a powerful standing army in a land so remote from England, or in any other country. Our tenure of that country rests upon slippery grounds; if a handful of wretches, without arms or vigour, could, as in 1816-17, run us down four or 500 miles, to the very gates of Madras, what should we feel at a more serious onset? At all events, whilst we hold it, let us do our best; let us protect the Natives in their properties, and tolerate their religions.

By the bye, I wish the well-meaning people of England, who are so fond of extending their bounty in the cause of Christianity to India,\* would look a little nearer home;—to the starving and wretched groups of their countrymen in Ireland; to save them from the pinching grasp of cold and hunger; to let the Hindoo alone, contented, innocent, and happy; and to apply to the side of real charity and beneficence the heaps of money that are extorted from credulity and weakness. I have thrown my eye with some attention upon the effects and workings of our religion at home amongst the lower orders; and, idolatrous as is the Hindoo religion, and devouring and obstinate as is the Mahomedan, I verily believe the maxims of real morality, and the practical effects of good life and order, are to be found in a wider range amongst those orders in Hindoostan, than in many parts of our own christian-denominated country.

In Ireland, in particular, no person travelling in that country, and finding hundreds of the people kneeling on the roads, and about the doors and windows of a cabin chapel, taking up the responses, the crosses, and heavings from those inside, (it being quite impossible for themselves to hear a word) would believe that he was in a civilized country, or in one in any way connected with the British Government. Yet that unhappy people are obedient and faithful to the calls of their pastors, whose authority and blessing they look more to than to the chief Local Authorities of that country. If the good people of England, instead of idly squandering thousands of pounds upon unprofitable and improbable speculations in the East as in Africa, would apply their charity towards the purchase of a few thousand coarse blankets and coarse jackets, for the naked and wretched inhabitants of some parts of Ireland, they would find their bounty turn to some account in real benefit to those whom they should first relieve, and who, in gratitude, would by degrees rid themselves of that darkness of superstition which at present envelopes so great a portion of them. No—for such is the inconsistency of the world, that we render ourselves unhappy about the mistaken Faith of the Hindoo, who is in every respect (save Christian designation) superior to the mass of our countrymen; and is happily, by his present persuasion, rid of those unruly and intoxicating propensities which the title of Christian would admit him to, and in the possible progression of such a growth we are ready to plunge that comparatively innocent and vast country into all the perplexities, vices, and appetites, that so scandalously mark our Christian brethren in so many parts of Europe.

I am, Sir, yours, &c. &c.

CARNATICUS.

\* We trust that these concluding sentiments will not be overlooked. Our pages are always open to discussion.—Ed.

## Absence.

By T. Campbell.—*Literary Gazette*, May 12, 1821.

'Tis not the loss of love's assurance,  
It is not doubting what thou art;  
But, 'tis the too, too long endurance,  
Of absence that afflicts my heart.  
The fondest thoughts two hearts can cherish,  
When each is lonely doom'd to weep,  
Are fruits on desert isles that perish,  
Or riches buried in the deep.  
What though untouched by jealous madness,  
Our bosoms peace may fall to wreck,  
Th' undoubting heart that breaks with sadness,  
Is but more slowly doom'd to break.  
Absence! is not the soul torn by it,  
From more than light, or life, or breath?  
'Tis Lethe's gloom, but not the quiet—  
The pain without the peace of Death.

## Mrs. Dugald Stewart.

To the Editor of the India Gazette.

Sir,

I beg leave to send you for insertion in your paper, a short poem written by the present Mrs. Dugald Stewart while she was Miss Cranstown, which I believe you will join with me in thinking very beautiful; and as the two last verses were added by Burns, and have never been printed, they will no doubt prove acceptable to your readers.

These tears I shed must ever fall,  
I mourn not for an absent swain;  
For time may past delights recall,  
And absent lovers meet again.  
I mourn not for the silent dead,  
Their toils are past, their sorrows o'er;  
And those they love, their steps shall tread,  
And friends shall meet to part no more.  
Though boundless oceans roll between,  
If conscious that his heart is near,  
A pleasing sadness glads the scene,  
Soft is the sigh and sweet the tear.  
And when by death's cold hand removed,  
We mourn the tenant of the tomb;  
To think that even in death he loved,  
Will gild the horror of the gloom.  
But bitter, bitter are the tears  
Of her who slighted love bewails;  
No hope her dreary sadness cheers,  
No pleasing melancholy hails.  
Her's are the pangs of wounded pride,  
Of blasted hope, of wither'd joy;  
The prop she leaned on, pierced her side,  
The flame she fed, burns to destroy.  
In vain does memory renew  
Those hours once tinged in transports dye;  
The sad reverse soon starts to view.  
And twines her soul to agony.  
Even conscious virtue cannot cure  
The pangs to every feeling due;  
Ungenerous youth! thy boast how poor,  
To steal a heart—and break it too.  
(Added by Burns, on being shewn the foregoing.)  
No cold approach, no altered mien,  
Just what would make suspicion start;  
No pause the dire extremes between,  
He made me blest, then broke my heart.  
From hope, the wretch's anchor torn,  
Neglected, and neglecting all;  
Friendless, forsaken, and forlorn,  
The tears I shed, must ever fall.

If you approve of this specimen, I shall be able to send a few others of a similar character.

I am, Sir,

A SUBSCRIBER.



# PARLIAMENTARY.

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## Minutes of Evidence.

*Taken before a Select Committee of the House of Lords—the Marquis of Lansdowne in the Chair.*

### EVIDENCE OF ALEXANDER ROBERTSON, ESQ. A MEMBER OF THE HOUSE OF COMMONS.

In what branch of Trade have you been concerned?  
In the China Trade.

During that Period have you frequently had Occasion to visit the Port of Canton?

Repeatedly; I was there Nine Times.

During that Time has the Trade with the Subjects of the United States with the Port of Canton made any considerable Progress?

Very great; in the Year 1795, when I went there first, Two or Three small Americans were all that were to be seen there: when I was there last, in 1812, it was understood there were between Thirty and Forty Ships.

To what Circumstances do you attribute that extraordinary Increase?

I attribute it greatly to the growing Consumption of Tea, both on the Continent of Europe and in America; and also to the Americans supplying themselves with Silk, manufactured Goods, and Nankeens, which formerly they got through us.

Has the Continent of Europe during that Period been at all supplied with Tea through the British East India Company?

During the War I believe in a considerable Degree; since then I believe almost entirely by the Americans.

Can you state whether the Dutch, or any other of the European States, import Teas from Canton, in Vessels of their own to any Extent?

The Dutch have One Vessel, or Two Vessels at most, at present; the Austrian Government is forming an Establishment in China, and sending out a Ship there; the Ship is now on her way from Trieste to Gibraltar, they are obtaining Officers and Mercantile Men from this Country, to conduct that Establishment and to navigate the Ship.

Can you state the comparative Expence of Freight per Ton upon American Ships, as compared with that of the Vessels of the East India Company in the Canton Trade?

The Freight of the American Ships is not one half: it will be now from Ten to Eleven Pounds a Ton out and home, and an English East India Company's Ship will be from Twenty-three to Twenty-five.

Were British Free Traders permitted to engage in the China Trade, are you of opinion that the Expence of Freight per Ton would be greater or less than that of the American Vessels?

At this moment it is probable it would be less; but I do not think it would continue so; I think, in the Course of Five, Six, or Seven Years, there will be a change take place: at present we are wearing out old Ships that were in the Transport Service, and have a Supply of Ships more than we can employ, and therefore sail them lower than we shall be able to do when we are obliged to build Ships, and then sail them in Opposition to the Americans.

Are not, however, the United States, in some Degree, in the same Condition, from having a considerable Number of Vessels thrown out of Employ by the Cessation of some part of the Carrying Trade which they were enabled to pursue during the late War?

I think it likely they have; but still they are able to build Ships much lower than we are: the Provisions for victualling their Ships are greatly lower than ours, and the only Disadvantage they have in sailing their Ships in Competition to ours, is in the wages of the Seamen, which do not counterbalance the other Advantages they possess.

So that in the Event of the Ships built for any Trade which is now abandoned being worn out, in both Countries, you conceive that the Subjects of the United States would, upon the whole, rather have the Advantage as compared with the Subjects of Great Britain?

I do.

Would not British free Vessels, were they to be engaged in the Canton Trade, have an Advantage in carrying out Manufactures and Produce of their own Country to China, as Articles of Export, which the Americans would be obliged to come to this country to procure?

I think they would have a very great Advantage in that Respect; and also from our greater Capital, which would much counterbalance their cheaper Navigation, under the Circumstances to which I have alluded in my former Answer.

Have you had any Opportunity, during your Residence at Canton, of ascertaining the Sort of Demand which prevails in China for Commodities, the Produce or Manufacture of Great Britain?

For Woollens there has long been a Demand; for Cottons a Demand has grown up lately, and is increasing very rapidly.

Do you conceive it probable that, under favourable Circumstances, that Demand would still continue to increase?

I do.

Would not the most favourable Circumstances that you can imagine, be the free Admission of British Enterprize to supply the Chinese Market with the Manufactures and Produce of this Country?

Certainly.

Do you believe that British Manufactures, if the free Trade to which Reference has been made were permitted, would have any Difficulty in adapting those Manufactures to the precise Tastes and Wants of the Chinese Consumers?

They would do it rapidly; one of the great Disadvantages, I think, in the present Trade is, that Persons going there do not know that they are to return to China in a future Voyage, therefore they take no Pains, when there, to prepare for returning there again; and besides, if they did, they would not have Time to get the Manufactures made in this Country, so as to return to China on the immediate succeeding Voyage.

In that Answer do not you allude to the Trade conducted by the private Adventure of the Company's Officers?

I do.

Are you aware of any Prejudices or Habits subsisting among the Chinese similar to those which are known to exist among the Hindoos, which might probably interfere with their Taste for, and Consumption of British Manufactures?

None whatever; on the contrary they are a People the most void of Prejudices on the Face of the Earth; whatever will suit their Convenience they will adopt immediately, in Diet or Clothing, or any other Way whatever.

Are you at all acquainted with Cochin China?

Only from Conversation with Persons who have been there; I have never been there myself.

From what you have heard relating to that Country, are you of Opinion that the same demand which you have described, as likely to exist in China, might also arise in that Country?

I think it would, and more rapidly even than in China, were an amicable Understanding to take place between us; they, I understand, receive great Part of their Clothing from China, and circuitously from Bengal through the Portuguese; and as we send our Manufactures from this Country to Bengal and to China, it is much more probable that the Cochin Chinese would take them from us direct, and give us their raw Produce in return.

What raw Produce is there in China or other Eastern Countries, which might become a Material of our Manufactures, and thereby the Foundation of a Commercial Intercourse, which would lead to an increased Consumption of these Manufactures in the East.

In the Countries less civilized than China, to the Eastward of Bengal, they all produce raw Materials for our Manufactures, such as, in those immediately on the Line, Cotton, which they now manufacture for themselves, and in Cochin China they produce Cotton and Silk, and all of them Sugar, Spices, and Coffee.

Any Indigo?

There are some Establishments of Indigo; they produce very little yet, but it might be produced to any Quantity were Encouragement given.

Are there any other Returns, which in the Course of a free Commercial Intercourse, those Countries might be expected to make?

There would be some Difficulty in getting Returns direct from those Countries for all they would be desirous of having from us; they can give besides Cotton and Silk, Coffee, Spices, and Gold, in considerable Quantity; but to carry on that Trade to advantage, it would be necessary to carry their Produce to China, which offers a more extensive Market for their Produce than Europe.

You consider then that a free Intercourse with China, would not only be advantageous to the direct Trade of this Country with China, but materially conduce to the Trade of this Country with the Eastern Islands, and to their Power of consuming British Manufactures?

Very much so.

(Mr. Robertson.) I would mention a Circumstance which has taken place this Season; Three or Four American Ships have gone from the River Thames, with British Woollens and Cottons to a considerable Amount.

If the Trade of the Eastern Archipelago was to be totally free considering the Speculation of the Merchants of this Country, do you not believe there would be a great Increase of Demand for our Manufactures?

I believe there would be a very great increased Demand for our Manufactures, and for this Reason, that before Java fell into our Hands no British Piece Goods were sent there at all, and now there is scarcely a Person in the Island who has not some Part of his Dress of British Manufacture.

Are you of Opinion that there will be the same Demand for British Manufactures, in case of their being sent to our Indian Possessions, and then going in Country Ships to those States in the Eastern Archipelago, as there would be if there was a direct Trade permitted?

I think, if our Manufactures are to go to the Eastern Archipelago through Bengal, that the Manufactures of Flanders will supplant ours in the Eastern Islands entirely, and that in a few Years we shall send none at all.

Do not you believe that there would be a great increased Trade to those Islands, if a direct free Trade was permitted, from the Circumstance of the extensive Capital possessed in this Country?

I do; but I conceive that the Extent of our Trade with those Islands must rest on our being allowed to go there in smaller Ships; for if we are confined to certain Ports, which the Limitation to larger Ships effectually does, the Consumption of our Manufactures will not become so general throughout the Archipelago.

Is there any other Channel to the Eastward of the Cape, beside those to which you have alluded in your Evidence, through which British Manufactures find a Vent?

British Manufactures at present go to Bombay, and from thence are exported in Country Vessels to Arabia and to Persia to a very considerable Extent; and I conceive, that if smaller Vessels were allowed to go to Arabia, for Instance, to Mocha, where a great Quantity of Coffee is produced annually, they would find a considerable Demand for their Manufactures in Exchange for this Coffee, and in Persia also, where they would get in exchange Silk, Specie, and Copper.

Are there not a considerable Number of Pirates in the Persian Gulf? There are a considerable Number, and it would be necessary to protect that Trade by small Men of War.

Do you mean that no Trade could be carried on advantageously with Persia, without a Naval Protection?

Not in very small Vessels.

Is the Sale of British Manufactures in Persia increasing? Rapidly.

Have not the Turkey Company recently introduced Manufactures to a considerable Amount into Persia by Land Carriage?

I have understood so.

Do not you apprehend that Land Carriage must be dearer than the Expence of Freight by Sea in any Description of Vessels?

I think it must.

The Witness is directed to withdraw.

Ordered, That this Committee be adjourned to Thursday next, one o'clock

*The Lord Auckland, in the Chair.*

# EVIDENCE OF JOHN FORBES MITCHELL, ESQUIRE.

In what Business have you been engaged?

For some years past I have been an East India Agent in London, Partner in the House of Smith, Inglis, and Company.

Where did you reside previously to so becoming an East India Agent?

I resided between ten and eleven years in Bombay, and was Partner in the House of Bruce, Fawcett, and Company, of that place.

Has your principal knowledge of the East India Trade been acquired since you ceased to reside in India?

My knowledge of the Trade of India itself was certainly most extensive whilst I was in India;—my acquaintance with the Trade from this Country to India, which has grown up since the opening afforded by the last Charter, has been mainly since that event took place.

State in what respects the Trade has been acquired or increased since the renewal of the Charter?

The Trade has been generally very much increased. A much greater quantity of the Manufactures and staple Commodities of this Country have been exported to India since the opening of the Trade than had been before exported.

In that Answer, do you speak of our Settlements in the East Indies or to that pursued also to China and the East India Islands?

I speak principally of the Trade which has been permitted to be carried on as the present Law stands; that is, Trade to the principal Settlements of India. During the time that the Island of Java was held by our Government, before it was given up to the Dutch, several

British Establishments were created upon it; and since the Island was so given up, the Trade has been continued that was then commenced, and is certainly increasing.

In that Answer, do you speak of a direct Trade between this Country and Java, or is it carried on from India to Java?

I speak of a direct Trade from this Country to Java. The Ships of this Country are freely admitted into the Ports of Java; at present they pay a higher Duty than Dutch Ships pay, but they are freely admitted to the Port of Batavia. I believe there are some Restrictions which do not allow them to go to the other Ports of the Island, but they are occasionally permitted to do even that, on License from the local Government.

You consider that Trade to be on the Increase?

Most certainly; and particularly in the Cotton Manufactures of this Country: to that I speak positively, for I have been engaged pretty extensively in it, and at this moment know of considerable Adventures going out.

In your opinion, are there any Regulations as connected with the East India Company here, or with the Dutch Government there, which stand in the way of its further and rapid increase; the question pointing to Java and the East India Islands generally?

Speaking of the Island of Java, the East India Company have no control over it, I believe. If it were practicable to induce the Dutch Government to put our Ships importing British Cargoes into Java, and exporting the produce of the Island, upon the same footing as their own Ships, in return for a similar concession on our parts in the Ports of India, or the ports of this Country, I think the Trade with Java would be very much benefited. With respect to what are called the Oriental Islands, I certainly am of opinion, that a very considerable Trade might be created, if those assistances were given which are now wanting.—I mean Ports where our Ships could land their outward Cargoes, and purchase their homeward Cargoes, with safety; such, for instance, as the Island of Singapore, in the Eastern Entrance of the Straits of Malacca. Since the opening afforded by the last Charter, I have frequently sent out patterns of the various productions of this Country, to various parts of India, and to the Eastern Islands, with which we had no communication before, merely to see whether those things would answer; and I have always found the Inquiry satisfactory, and that there was every prospect of an opening for those Commodities.

Specify such Articles as you think a demand is likely to arise for?

I think, particularly, the Cotton Manufactures of this Country; printed Cottons, white Cottons, and what are known in India by the name of Policat Handkerchiefs. The Malays wear this Handkerchief round the head; and I believe the Natives of Java wear a dress of cotton folded round the body, which has been so well imitated here, that their own native Manufacture has been very nearly driven out, the cost of the British Manufacture being less.

Are you in the Habit of receiving Orders from Americans for British Manufactures, to be exported to the East?

No: I never executed any Orders for Americans; but I have an Opportunity of knowing, that very considerable American Orders are executed for China and those Islands, principally for China.

Do you not consider the Regulations of the East India Company, as respecting China, to cramp all our commercial Speculations with those Islands?

I certainly do; and if I may be permitted to observe, it appears to me, that the Chinese, of all People in the World, are the most likely to consume the Cotton and Woollen Manufactures of this Country to the greatest Extent, also Hardware Manufactures, such as Cutlery, &c.

State in what Manner those Restrictions upon the China Trade affect our Trade with the Islands?

If our Ships were permitted to carry Cargoes of British Manufactures for Sale among the Oriental Islands, or in China, they might ultimately proceed to China, and return to Europe with profitable Cargoes; whereas not being permitted to go to China, they would, as it appears to me, have great Difficulty in getting back their Returns.

State the Course of this American Commerce?

I believe the American Ships generally proceed with Specie on board to the Oriental Islands, and there exchange their Specie for the Productions of those Islands, which I have before enumerated, in which they are sometimes engaged for several Months, trafficking backwards and forwards; and that they then proceed to China, where the Produce of the Oriental Islands is exchanged again for Chinese Goods, and those Chinese Goods brought to Europe.

Do they not occasionally, in the first Instance, proceed to this Country, and take in a Cargo of British Manufactures?

Within these few Weeks I have been making some Enquiry upon the Subject, and I find Two American Ships have just cleared, laden partly with British Manufactures, and partly with Specie, for China.



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Can you state any Particulars as to their Cargoes?

One of them has on board British Manufactures, principally Woolens, Worsted Stuffs, and printed Cottons, to the Value of about £21,000; and the other, British Manufactures, principally Wollens and Worsted Stuffs (which latter I believe means Camblets), to the Amount of £20,000; also between them there is £30,000 of Treasure, making in all about £70,000. One of the Vessels is entered out for Canton, and the other in the first Instance for Gibraltar, which is a free Port, and it is perfectly understood she is going to China.

What is the Tonnage of those Two Ships?

About Five hundred Tons each, I believe.

Can an American of a small Size, by Law, clear out from London for India?

I am not aware of any Restriction on American Shipping in that Respect; nor is there, as I understand, any Restriction as to Size upon a British Ship clearing from Gibraltar.

Would not a British Ship of a like Burthen, clearing out from Gibraltar to the Indian Islands, be liable to Penalty when in the Indian Islands?

I believe not.

You speak of the Americans having Advantages in trafficking along the Coast; do you allude in that Answer to their being permitted to carry on their Commerce in Ships of light Burthen?

When I said that the Americans had a great Advantage over British Ships in trafficking along those Coasts, I meant, that they had the Advantage of being perfectly unrestricted; and that they could go and come where and when they pleased, as well as in their Size: certainly a Vessel of 350 Tons is better adapted to that kind of Traffick than a heavy Vessel of Four or Five hundred; but an English Ship measuring 350 Tons will carry 500, and an American Ship carries only what she measures.

Do you consider the Restrictions as to Tonnage to be among the principal Impediments to the Improvement of the Trade?

I consider it an Impediment, but not the principal Impediment perhaps.

You spoke of having sent different Patterns to the various Islands: did you mean Patterns of Cotton Goods only, or of different Kinds of Manufactures?

Of all Kinds of Manufactures; Cottons, Woollens, and Worsted, and Hardware also.

You mentioned having sent Samples of Cotton Goods to the Eastern Islands with Success: did you mean by that Expression, that you had executed any Orders in consequence to any considerable Extent?

I have already mentioned that my principal Connection hitherto has been with Java; and certainly I have executed considerable Orders in consequence of Patterns sent there. With respect to the other Islands, as our Merchants have hitherto had no other Station, Penang has been the Head Quarters of our Trade, and through that Channel, although I have not yet executed any Orders, I have lately received satisfactory Information upon the Subject.

You have said that considerable Trade with the Oriental Islands could be established, if properly secured; what did you mean by that Expression?

That there should be One or Two Stations among those Islands, to which our Ships might be addressed, and where their Cargoes might be deposited in Safety, and where the Return Cargoes might be taken in and brought back to Europe.

Do you apprehend there would be any Danger in the Navigation there, or in that Intercourse, arising from Pirates?

There certainly is such Danger; those Seas are infested with Pirates; and the Shipping belonging to our Settlement at Penang are generally armed.

What is the lowest-sized Ship you should consider as secure from the Attacks of Pirates?

I believe the Penang Eastern Traders are seldom under 250 or 300 Tons.

Do you consider them as secure from Pirates?

I believe they are considered by their Owners to be secure, and that they are found the best Description of Vessel for that Kind of Trade.

Are there not American Vessels trading in those Seas of much smaller Tonnage?

Yes; I have seen an American Vessel at Penang, I think, of Eighty Tons; and they are of all Sizes under 500 Tons.

Did you ever hear of any American Vessels experiencing Attacks from Pirates?

I cannot say that I recollect one Instance.

Are you aware whether there is any Difference of Insurance between American and Penang Vessels?

I am not aware that it has been customary to insure the Penang Vessels in this Country, so that there is no Scale by which I could compare it; but I would say generally, I should not think there would be any Difference.

Have you practically known much Loss sustained by our Trade in those Seas?

No, I have not; I cannot call to Recollection any Instance of any considerable Commercial Loss; there have been various Instances of Ships trading upon the Coast being cut off by the Natives, in Quarrels either for the Crew or Commanders: these Instances have occurred perhaps once or twice in the Course of my Recollection, but not frequently.

Are the American Vessels better manned and armed than our own?

The American Vessels, I believe, generally carry about Six Men for every Hundred Tons: the British Ships, I think, consider Six or Seven sufficient. I do not think the Americans are better armed.

Have you yourselves experienced any practical Inconvenience from the being obliged to carry on the Trade with Java in Vessels of not less than 350 Tons?

No; my Opinion is, that a Vessel of 350 Tons is quite small enough for the Trade to Java, because the cargo is taken in at one Port in Java, generally.

Have you Reason to think that the Import of Goods by the East India Company in China has been beneficial to them?

No; I have Reason to believe that it has not been beneficial to them.

To what Cause do you attribute that Circumstance?

I can only impute it to the Circumstance of their being a great chartered Company; for it is within my Knowledge, that those very Articles carried by the East India Company to India, and which they could not themselves sell there, have been sold by them to private Merchants; and that private Merchants, have made Profit upon them at Canton.

By being sold by them to private Merchants, do you mean sold by them to private Merchants at a Profit?

No, at a Loss.

If there was a Probability of there being so great a Demand in China for Woollen Goods, as you stated in the former Part of your Evidence, do you conceive that the loss that the East India Company may have experienced from the Sale of those Goods is to be wholly accounted for by their being a Company?

When I say that it is because they are a great Company, I mean of course in that to convey, that they do not carry on the Trade in the same Way that a private Merchant would do. They pay more perhaps for their Goods in the first Instance; it costs them more to carry them there; they do not take the same Means of selling them that a private Merchant does; and generally, I have no Doubt that what is a losing Trade in the Hands of the East India Company, would be a profitable Trade in the Hands of private Merchants.

Why does it cost them more to carry the Goods?

Their Ships are much more expensive.

To what Cause do you attribute their being much more expensive? They are much larger and more expensively furnished.

Do you know the Difference of Freight charged to the East India Company and to Private Traders?

The lowest Rate of Freight the Company pay for one of their China Ships is I believe about £25 a Ton, and a Private Ship might be found for the same Voyage for £10 a Ton.

Upon which would the Insurance be the greatest?

I think there would be scarcely any Difference. I speak of a very fine English Ship when I speak of a Ship at £10 a Ton.

Do you happen to know whether the Warehouses in the Ports of Hindostan are at the present Moment glutted with European Merchandise?

I understand the Question to refer to Calcutta, Bombay, Madras, and Prince of Wales Island. I received a Letter yesterday from Calcutta, representing the Price of all European Commodities to be improving, that the Glut had ceased. With respect to Bombay, in some respects there was perhaps too many British Goods there, in other Instances too few. I should say that the Market was not overstocked. The Trade with Madras is very limited, and I cannot speak so decisively with respect to that; I believe at Penang the Quantity of European Goods is not more than usual.

Have you understood that the Glut at Calcutta has been very great?

Yes, it was very great perhaps about a Year or Eighteen Months back; but the Effect of that Glut has been a more extensive Consumption, and the Glut is perhaps the best Thing that could have happened for this Country. I think, if I may be permitted to make the Observation, that something might be added to our Commerce with His Majesty's Islands of Ceylon, were it not that the Duties levied by our

Government there are so exceedingly heavy as to prevent all Commerce. I have a Letter from a most respectable Merchant there, which I will beg to read; it is dated Point de Galle, the 24 of November 1818, and in these words:—"If we had but due Encouragement at Ceylon, I think we might do well; but our Duties are sadly against us. I mentioned them in a Letter some Time ago, in the Hope of some Notice being taken of them, and now beg to repeat to you, that even on Broad Cloth, Iron, Copper, and all Articles of British Manufacture, 25 per Cent. is added to the Invoice, and 8 per Cent. charged on the aggregate making a Duty of 10 per Cent. On Cotton Cloths it is still worse: 25 per Cent. is added to the Invoice, and 12 per Cent. charged on the aggregate, making a Duty of 15 per Cent. which, you will allow, amounts nearly to a Prohibition. Was it not for those Duties, I think we might take many more Things than we do, particularly of Cottons; so pray see what you can do. I really think it cannot be known that such Duties exist in a King's Colony, when the same Articles are imported in British Bottom Duty-free at the Company's Settlements; but there is no Difference between British and Foreign Bottoms." The Duties on British Manufactures were ordered to be taken off in the Ports of India soon after the last Charter was granted to the East India Company; they pass free into those Ports I believe at present.

How are those Duties imposed?

By the local Government of Ceylon.

Is there any Trade carried on between India and China in Country Ships?

There is a great Trade carried on between India and China in Country Ships, a great Trade from Bengal, and a great Trade from Bombay in the Products of India; but during the former Charter of the East India Company, their Indian Governments frequently would not permit British Staples and Manufactures to go to China in the Country Ships of India; and I believe they still consider that they have the same Power they then possessed, and that some of the local Governments still exercise it occasionally; although I think this is a Point the Court of Directors would easily relinquish, if it was requested of them.

Can you suggest any Mode, by which the Export Trade from this Country to British India could be increased?

I think if the East India Company would freely permit the Country Trade of India, which at present is permitted to carry on Trade between India and China, and between China and India, freely to carry British Staples and Manufactures to China, that such Freedom would occasion a considerable additional Opening for those Goods.

Do you know whether any Attempt has been made by British Merchants to carry on a Trade with Cochin China?

I believe not, for some Years past.

Was any Attempt that ever has been made unsuccessful?

I really cannot speak decidedly upon that Question.

Do you think there is an increasing Demand for British Manufactured Goods for the Use of the Natives of the Continent of India?

Yes; I certainly do think the Demand for British Manufactures on the Continent of India will increase; and that it is extending itself into Persia and other Countries.

What Description of Articles of British Manufacture and Produce generally find a Market now in Hindoostan?

The printed Cottons and white Goods of Manchester, and the fancy Muslins and Goods of Glasgow; there is a considerable Demand also for Copper, Iron, and Lead, for Hardware, Glassware, &c. There was an immense Demand for empty Bottles, which was overdone, but is again reviving.

Are you acquainted with the Trade in the Persian Gulf?

During the Time I resided in India, I had an Opportunity of knowing that there was a considerable Trade carried on between India and the Persian Gulf, but I was not myself engaged in it.

Do you consider it an important and improving Trade?

I have just stated, that I consider the Trade in British Manufactures as increasing, and I believe a considerable Portion of the Exports from England to Bombay of British Manufactures have gone to supply the Persian Market.

Are there any particular Impediments in that Trade, which do not exist in any other British Trade?

There are Pirates in the Persian Gulf, who are very formidable, and against whom an Expedition has been lately acting; it will almost always require a Naval Force from Bombay to keep the Navigation in the Gulf of Persia open.

Would a very small Force be sufficient for that Purpose?

The Bombay Marine has generally possessed Three or Four Ships of Sixteen or Eighteen Guns, and I should think a Force of that Description quite sufficient to prevent the Pirates gaining any great Strength. It has required a strong Armament to put them down; but that was after they had been suffered to exist for some Years.

Are you acquainted with the Trade from India in British Ships to the Port of Liverpool?

Since the free Trade has existed, we have had several Ships consigned to us from India to the Port of Liverpool.

Have the Traders to the Port of Liverpool any superior Advantages to those who trade to the Port of London, arising from the Delays previous to the breaking Bulk in the Port of London?

Most certainly; the Port of Liverpool has an Advantage over the Port of London in many Respects; the Dock Dues are much less, and the Delays in the Docks are much less; in fact, a Ship may be cleared in Liverpool in the Course of Ten Days after her Arrival; by the utmost Expedition, it will take Thirty in London.

Is not that Delay peculiarly detrimental to the Trade, which consists in Re-exportation from the Port of London?

No doubt it is; I think I have seen a Calculation that, from these Causes, a Ship could afford to carry on Trade with India from Liverpool, at from One to Two Pounds per Ton less than from London.

Do those Disadvantages, in your Opinion, arise principally from the Nature of the Port of London, or from the different Regulations that are adopted in it?

They do not rise from the Nature of the Port of London; on the contrary, London is better situated than Liverpool, being nearer the Continent; they arise principally, in my Mind, from the expensive Establishments of the Docks and the extreme Delays occasioned by those Establishments.

The Witness is directed to Withdraw.

Ordered, That this Committee be adjourned to Tuesday next, 12 o'Clock.

### Passengers.

The following is a more correct List of the Passengers arrived by the India-men at Madras than has been published.

*Per Marquess of Wellington.*—Mrs. E. R. Sullivan, Mrs. Manning, Mrs. J. W. Wright, Miss M. Sullivan, E. R. Sullivan, Esq. W. Kindersley, Esq. W. Ashton, Esq. Rev. Mr. Wright, Captain R. Hunter, Capt. J. Read, H. M. 69th Regiment, Lieut. Bagshaw, H. M. 89th Regiment, Ensign W. Alphart, H. M. 89th Regiment, Mr. W. Hall, Mr. R. E. Evans, Assistant Surgeon, Mr. Higginson, ditto, Messieurs A. Sheriff, W. Book, W. Duncan, R. W. Symes, C. Thursby, A. Y. Cotton, and J. Johnson, Cadets.

*For Bengal.*—Misses J. Mackenzie, L. Larkins, C. A. Fraser, and F. Fraser, W. Shakespeare, Esq. Lieutenant-Colonel Sir Thomas Ramsay, E. P. Smith, Esq. Writer, S. Fraser, Esq. Writer, Mr. G. Hunter, Assistant Surgeon, Ensign Thomas White, 14th Regt. Messrs. G. A. Barber, J. Whiteford, W. Y. A. Seymour, and T. P. Aikins, Cadets, Mr. W. H. Urquhart, Free Merchant, Messieurs J. Aikin, J. Lyons, and E. B. Hughes, Free Mariners.

*Per Thomas Grenville.*—Mrs. Parr, Mrs. Rosser, Mrs. Wilson, Miss Lydia Bishop,—Captain R. Gwynne, 10th Regiment in command of Detachment Hon. Company's Recruits; Capt. Williams, Lieutenant Finn, and Ensign Moore, H. M. 69th Regiment, Ensign Browne, H. M. 46th Regiment, Capt. Bishop, Madras Artillery, Capt. J. Gwynne, 13th Regiment, Lieutenant G. K. Babington, 18th Regiment, Rev. J. O. Parr, Chaplain, Mr. Thos. Anderson, Cadet of Cavalry, Messrs. John Gordon, Walter Scott, J. A. Shannon, Arthur Ormsby and Christopher W. Nicholas, Cadets of Infantry, Rev. J. Wilson, Missionary, Mr. Wm. Rosser; 150 Artillery and 100 Infantry Recruits; 8 Women and 2 Children.

*For Bengal.*—Mrs. Sarah Wynne, Mrs. Fisher, Mrs. Esther Davison, Miss Charlotte Dawney, Miss Maria Faithful, Miss Ann Fisher, Miss Cordelia Creighton, Miss E. A. Williams, Miss H. M. Williams; Messrs. Dovin and J. Augustus Irwin, Writers, Dr. W. Hewitt, Dr. Donald Butler, and Mr. Charles Dennis, Assistant-Surgeon, Messrs. G. M. Mee, Wm. Stuart, Matthew Smith, Wm. Peil and Francis Hunter, Cadets for the Infantry, Mr. Henry Drummond, Cadet for Cavalry, Master George Williams.

### Deaths.

At Pertabgurh, in the Province of Malwah, on the 30th ultimo, Cornet A. PEDREN, of Skinner's Horse.

At Trichinopoly, on the 3d instant, Major JOHN FOTHERINGHAM, of Engineers, after an uninterrupted service of nearly 30 years.

At Madras, on the 3d instant, Mrs. ABIGAIL BARR, Dress Maker and Milliner, Mount Road.

At Madras, on the 2d instant, at the house of Mr. FRANCIS DUNKER, the Wife of Mr. JOHN RAULIN, aged 24 years, 5 months and 15 days.



## Judicial System of India.

### ON PUNCHAYETS, NATIVE REGULAR PLEADERS, &c. WITH SUGGESTED IMPROVEMENTS IN THE NATIVE COURTS.

*To the Editor of the Calcutta Journal.*

SIR,

The following Observations have been written some time, but indisposition and other causes prevented my getting them transcribed at an earlier period.

Previous to making any remarks on the last Letter of GANGETICUS,\* I must apologise to you for having forwarded my Letter without referring to Barrington in the first instance. The reasons mentioned by him seem to be both taken from an Act of Parliament. I had merely recollected the authority, without the qualifying terms in which it is mentioned by the Author: the two reasons, however, are not incompatible with each other; for Millar has adopted them both. Speaking of the jurisdiction of the Feudal Lords he says: "The assessors of the Judges were the Pares Curie, &c. they were chosen occasionally, and varied in each cause, TO AVOID BURDENING ANY INDIVIDUAL MORE THAN HIS JUST PROPORTION; and they were commonly selected from the neighbourhood of the place where the accusation or dispute had taken its rise, THAT, FROM THEIR OWN PRIVATE KNOWLEDGE, THEY MIGHT BE ENABLED TO FORM A BETTER JUDGMENT OF THE FACTS IN QUESTION." He further goes on to remark that this process or inquest by a Jury (in its principle of locality so analogous to the Panchayet) was introduced into the Feudal Courts, having previously obtained in the Saxon Tribunals of the Shire and Hundred. The method of carrying on the business must have varied with the varying caprices of the individuals in power. One distinction between the two Systems is that our Juries under the King's Courts proceeded upon a writ directed to the Sheriff; whereas the Panchayet act upon their own authority: at the same time it is worthy of remark that the Officers of Government on both sides of India seem to have been *ex-officio* members of the Village Assembly. The whole doctrine of ancient writs is involved in impenetrable obscurity. The jurisdiction of the King's Courts is a subject well worthy of meditation; its rise and progress must have been effected by the constant oscillations in the power of our Kings. The nobility avowedly claimed and exercised Civil and Criminal Jurisdiction in their estates; it is possible therefore that in the Feudal and Saxon Courts, the doctrine of Writs may not have obtained; and that the distinction noticed above between the two Systems is not original but consequential: a result of the universal Jurisdiction of the King's Justices, which followed as a necessary consequence of the increasing power of the Crown, and the march of the Royal prerogative.

The analogy of *locality* remains wholly unimpeached: it was retained more or less under every change of System; and the circumstance of its being so much disregarded in modern times, may be traced to the King's Lawyers' special pleadings, and pleadings having given a death blow to the ancient system of things. My erroneous reference to Barrington, affects not the general argument, which refers more to an analogy in point of fact, than in point of theory. On this subject I can only refer to those common works which are in every body's hands. I make no pretensions to any scientific research; but I must crave leave to observe, that until the errors of such writers as Sir William Blackstone are clearly pointed out, and until we are made acquainted with the arguments of deeper searchers into our legal antiquities, I for one must remain satisfied with that information which is to be gathered from the common standard works.

With these preliminary remarks, I shall beg leave to comment on the observations of GANGETICUS, in the order in which they present themselves in his Letter.

And, first, in proof of his own position, "that Arbitration is a contrivance for superseding all Law, and that it is the resource of lawless barbarians," he has cited two Authors: Millar & Lord Kaimes.

To the theory of the first, as I understand it, I have no objections to urge.

To that of Lord Kaimes, I must object *in toto*; because it is founded neither on fact nor reason, and is grounded on an assumption repugnant to the general practice of domiciled tribes. It is built on this, "that original arbitration is only effectual at the discretion of the parties, and NOT COMPULSORY." He refers to disputes about property and civil rights, neither of which are likely to arise prior to the appropriation of land. Neither will it materially alter the case, if his theory should be considered as referring to society previous to the appropriation of land. No tribes of which we have any knowledge are absolutely in a state of nature: even the wandering Kechuks, who neither attach themselves to the soil nor have any fixed abode, pay some sort of obedience to particular members of their fraternity. A striking instance occurs of this in the case of a Chief apprehended for murder in one of our districts. This man paid the Darogah 7,000 Rupees to allow him to escape: this would not have happened to one of their rabble; and so large an appropriation clearly indicates power in the person who benefitted by it, as well as a subordination of ranks. Be this as it may, no domiciled tribe affords any evidence in favor of Lord Kaimes, whose whole theory is founded on a species of inefficient arbitration, which might be declined at the option of the parties. Millar's observations are more just and worthy of an Essay which professes to trace the Progress of Law. "In the infancy of society, men have no other method of terminating any difference which cannot be amicably adjusted, than either by fighting, or by referring it to the decision of a common Arbitrator; the Arbitrators chosen on such occasions, (he continues,) will probably be persons capable of giving weight to their decisions." What do these words imply, but compulsory arbitration? such as we find it amongst the Garrows, the people of Rajemahal, and generally all mountain tribes. "The longer these men (continues Millar) have officiated in the same employment, provided they have acted with tolerable propriety, the respect paid to their opinion will be the greater: their own efforts to render their sentences effectual, will also, from considerations of EXPEDIENCY, be supported by the general voice of the community."

This is a rational and reasonable account of the Origin of Power. The consent to abide by the reference must be considered as implied rather than expressed; because the facts that are elicited from our acquaintance with barbarous tribes, lead to two conclusions:—

First, that the power of these self-created Judges in the infancy of society is absolute, final, without appeal, so long as they act according to the dictates of reason and justice; and Secondly, that the assignment of an armed force, to assist them in enforcing obedience, forms no part of the social compact of such communities. Their own efforts being supported by the general voice of the community, enable them to administer Justice in their rude, but simple state: hence I have considered Millar's theory to refer to compulsory arbitration without this interpretation: it is contradictory in itself, and open to the same objections as that of Lord Kaimes. The assignment of an armed force is the result of farther advancement in civilization; and Millar, by his own words, admits that "previous to the assignment of an armed force the voice of the community renders their sentences effectual." That no tribe has as yet been met with in a state of nature, is tacitly admitted by Mr. Locke; and speaking of the rude state of nature, which is supposed to precede compulsory arbitration, he observes, "though this be a state of Liberty it is not a state of License; and that hence the execution of the Law of Nature is put in every man's hands; whereby any one has a right to punish the transgressors of that law in such a manner as may hinder its violation." Hence one man comes by power over another, and upon the same principle is founded the practice of compulsory arbitration.

The first step towards civilization, is the Law of Appropriating. The second, the practice of Compulsory Arbitration: it is the germ from which all Civil Institutions spring, it is the corner stone of the great building of Civil Polity. It resembles in this respect the little acorn, from which the mighty oak, with all its stupendous branches and ramifications, springs; and so far from

\* Inserted in the Journal of July 26, 1821, Vol. IV. No. 293, p. 329.

being a device to *supersede all Law*, it is that from which *all Law has its beginning*. Hence Millar has justly treated it as a first step in the progress and improvement of Law and Government.

I think that in referring to Millar's Essay, GANGETICUS has been unfortunate; because it proves the converse of his own proposition. How far civilized nations have been wise, in retaining this elementary principle of Law, I leave for others to decide. On this part of the subject, I have only to add, that *it is really too late in the day for a writer to come and tell us, that the process by which the early inhabitants of the world escaped from barbarism, was a contrivance for superseding all law.*

It is further objected to my arguments, to use the words of GANGETICUS, that "the Panchayet have at all times been judges of the law, as well as of the fact; our Juries were formerly not judges even of the latter, and never of the former. It appears then, that there has always been an essential and most important distinction between them; and that the difference, instead of being less formerly, was greater. Down to the reign of Queen Mary, Juries were witnesses of the fact, sworn to SPEAK the truth from their own knowledge: about that time, they began to be made judges of the fact: their number was always twelve."

Against the whole of this passage of GANGETICUS I must protest: no one single position in it do I conceive to be correct. For the present, I will confine my remarks to the question of how far our ancient Juries were judges of the law, as well as the fact, a circumstance in which they resemble the Panchayet. With respect to the latter, the observations of GANGETICUS must be understood under some limitations; because although the Panchayet judge both the law and the fact, their decisions are neither absolute nor final in all cases, but are liable to be revised by the Officers of Government; and, further, their decrees may be altered at the seat of Government. The observations of GANGETICUS on English Juries, are founded in a complete misconception of the nature of the ancient Jury Process, as must appear evident to any person who will take the trouble to examine the subject. The old Writs appear, to my humble judgement, clearly to warrant this conclusion, that Juries in former times were to all intents and purposes judges as well of the law as the fact.

And who could be better qualified to interpret the customary and traditional law of the country? In those days the laws were simple, men were as yet unlearned in the arts of legal chicanery. In those times special pleading was unknown; and Acts of Parliament were not manufactured in the wholesale way in which they at present are.

This subject has been well described by Blackstone:—"The Common Law of England has fared like other venerable edifices of antiquity, which rash and unexperienced workmen have ventured to new dress and refine with all the rage of modern improvement. Hence frequently its symmetry has been destroyed its proportions distorted, and its majestic simplicity changed for specious embellishments, and fantastic novelties. For, to say the truth, almost all the perplexed questions, almost all the niceties, intricacies, and delays, (which have sometimes disgraced the English as well as other Courts of Justice) owe their original not to the Common Law itself, but to innovations, that have been made on it by Acts of Parliament; overlaid (as Sir Edward Coke expresses himself) with provisoes and additions, and many times on a sudden penned or corrected by men of none, or very little judgement in law." This great and well-experienced Judge declares, that in all his time he never knew two questions made upon rights merely depending upon the Common Law; and warmly laments the confusion introduced by ill-judging and unlearned legislators.

To understand this subject, we must remember, that the modern practice of our Law involves a series of fictions; and to such an extreme have the lawyers carried their abhorrence of the old process, in their zeal for the new, that the Editor of the Commentaries has thus expressed himself:—

"This is now the only action (alluding to an action on the case) in use for most of the injuries specified in this chapter: the ancient appropriate writs have become so obsolete, that few special pleaders, if any, would know how to proceed in them."

These gentlemen, the special pleaders, have been the greatest enemies the ancient law has known. Look at the law of common recoveries, and see how Judges have set their faces against Acts of Parliament themselves.

One passage more, and I proceed to cite the old process, on which I rely. "Our system of remedial Law (says Blackstone) resembles an old Gothic castle, erected in the days of chivalry, but fitted up for a modern inhabitant. The moated ramparts, the embattled towers, and the trophied halls, are magnificent and venerable, but useless, and therefore neglected; the inferior apartments, now accommodated to daily use, are cheerful and commodious, though their approaches may be winding and difficult."

How far the lower apartments are either cheerful or comfortable, GANGETICUS will do well to consider, before he offers further arguments in favor of these (to my perceptions) damp and unwholesome chambers, into which he seems so desirous of introducing the suitors of India.

In considering the nature of our old Jury Process, the first point that attracts attention, is the subject of writs of entry, and writs of right:—Blackstone remarks that they differ in this: "actions under the first, being only possessory, decided nothing with respect to the right of property." How far this doctrine can be reconciled with what he says, page 193, I shall leave the reader to decide.

"If the owners of a particular estate, as for life, in dower, by the courtesy, or in fee, are barred of the right of possession by a recovery had against them, through their default or non-appearance in a possessory action, they were absolutely without any remedy at the Common Law; as a writ of right does not lie for any, but such as claim to be tenants of the fee-simple." This passage, if it means any thing, proves that the decision in these possessory actions being final and absolute, must have involved the question of right at the time of trial—otherwise there could have been no Law at all in the country. The Act 13th, Edward the First, so far from altering the principle of the Common Law, confirms it, granting to suitors an appeal, new trial, or writ of right.

But this is not all: if any person will take the trouble to look into the cases in which the writ of right might be sued out, he will find that they differ in nothing from those in which the writ of entry applied a remedy. The writ of entry appears to have been the most ancient of the two. "In the times of our Saxon ancestors, the right of possession seems only to have been recoverable by writ of entry, which was then usually brought in the County Court."

As causes were drawn into the King's Courts, the process became more dilatory, and our ancestors were obliged to restore to its pristine vigour the system of locality which obtained amongst the Anglo-Saxons. Hence the Remedy Assize, which is called by Statute Westm. 2, 13 Edw. I c. 24, "*festinum remedium*," in comparison to the then dilatory process of a writ of entry, it not admitting of many dilatory pleas and proceedings to which other real actions are subject. The writ of assize was, however, a real action, as well as writs of entry and right. No system yet devised seems to have escaped from the charge of dilatoriness.

The Commentator admits that the two remedies by writ of assize and writ of entry, are in all other respects so totally alike, that a judgment or recovery in one is a bar against the other.

The several divisions of writs of entry are numerous, and suited to the respective circumstances of those who require them. According to Sir W. Blackstone, "The writ of assize is said to have been invented by Glanvil, Chief Justice to Henry the Second." Justices in Eyre were appointed to go round the Kingdom in order to take these assizes; and the assizes themselves (particularly those of *mort d'ancestor* and *novel disseisin*) were clearly pointed out and described. An assize is a real action, which proves the title of the demandant merely by shewing his or his ancestor's possession. Before the assize, the matter of right, and with it the law as well as the fact, must have come in question. In these writs, the Sheriff is ordered to summon a Jury or assize.

This remedy, by writ of assize, is only applicable to two species of injury by ouster, viz. abatement, and a recent or novel disseisin.



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If the abatement happened upon the death of the demandant's father or mother, &c. that is in the first degree, the remedy is by an assize of *mort d' ancestor*, or the death of one ancestor.

If the abatement happened on the death of one's grandfather or grandmother i. e. in the second degree, then an assize of *mort d' ancestor* no longer lies, but the writ of *ayle*, or *de avo*; if on the death of the great-grandfather, &c. i. e. in the third degree, then a writ of *besayle* or *de proavo*, &c. or if the abatement happened upon the death of any collateral relation, other than those before-mentioned, the writ is called a writ of *cosinage*, or *de consanguineo*; and the same points shall be enquired of in all these actions ancestral, as in an assize of *mort d' ancestor*, they being of the very same nature.

The writ of *mort d' ancestor* directs the Sheriff to summon a Jury or assize, who shall view the land in question, and recognize whether such ancestor were served thereof on the day of his death, and whether the demandant be the NEXT HEIR. To call such Juries, witnesses, is a palpable abuse of terms. They were to inquire into all particulars, and give a true recognition on their oath to the Judges who come down by the King's Commission to take the recognition of assize. Hence the doctrine of attainments, by which these who had sat together on the spot, like the *Punchayet*, were punished for malversation in their office.

Neither do I perceive any reason why compurgators should be considered as witnesses. Independent of the anomalous nature of such a proceeding, we may trace their origin, to use the words of Millar, to a law which has been ascribed to William the Conqueror, but which is probably of an earlier date; in which it is enacted, that if a crime is committed by any member of a decenary, who escapes from Justice, his tythingman; with two others, of the same tything, together with the respective tythingmen, and two others out of the three neighbouring tythings, shall assemble to examine the state of the fact; and if the tything to which the criminal belongs is purged by the oath of these twelve persons, it shall be freed from the obligation to pay the damage.

It is difficult to conceive why in those simple times there should be one process to assess the tythings and another to try the criminal. The act cited above clearly shows that recognitions of felony were held on the spot as well as inquests of assize; and reasoning from analogy in the latter case, their can be but little difficulty in tracing the law of compurgators to this law of the Conqueror. On these grounds, therefore, I cannot admit that compurgators were witnesses, and still less Civil Juries. A Jury was summoned on all ancestral writs; and I will ask GANGETICUS whether, on a writ of *nuper obiit*, they were witnesses or judges not only of the fact but of the law.

This writ is thus described: "There is also another ancestral writ, denominated a *Nuper Obiit*, to establish an equal division of the land in question, where on the death of an ancestor who has several heirs, one enters and holds the others out of possession.

If the above remarks are not sufficient to satisfy GANGETICUS, and to induce him to admit first that Juries were always judges not only of the fact but of the law; and secondly, that they were not witnesses; I crave his attention to the assize of nuisance, a writ wherein it is stated "that the party injured complains of some particular fact done, ad nocumentum liberi tenementi sui; and therefore commanding the Sheriff to summon an assize, that is a Jury, and view the premises, and have them at the next commission of assizes, that justice may be done therein." I beg leave further to refer my Opponent to the writ of *waste* and the proceedings held thereon; from which he will perceive that the Jury were required to go in person to the place alleged to be wasted, and there enquire of the waste done and the damages.

The writ of *admeasurement of pasture* involved points of fact and local law. The execution of this writ must be by a Jury of twelve men who are upon their oaths to ascertain, under the superintendence of the Sheriff, WHAT AND HOW MANY CATTLE each Commoner is entitled to feed. And the author in the next paragraph speaking of surcharge after inquest had, remarks, that "the right being once settled, is never again disputed; but only the FACT is

tried" whether there be any second surcharge or no; which gives this neglected proceeding a great advantage over the modern method, by action on the case, wherein the quantum of Common belonging to the defendant must be proved upon every fresh trial for every repeated offence.

Neither is the assertion of GANGETICUS, "that the number in a Jury was always twelve," better founded than the rest of the paragraph, in which it is maintained that my partiality for the *Punchayet* arises from my erroneously supposing that it is a modification of our boasted Trial by Jury.

The number has varied in the different countries of Europe, and in the inquest called "inquest of office" the Jury consisted of no determinate number; being either twelve, or less, or more. See page 258 c. 17, Book 3, Volume 3, of the Commentaries.

These ancient forms of proceeding are still the Law of the Land, though obsolete and disused. Blackstone thinks they may perhaps in their turn be hereafter, with some necessary corrections, called out again into common use; but on this subject I see little ground for pleasing anticipation, so long as the winding and difficult approaches of Special Pleading remain so attractive. The misfortune of these times, is, that no man can approach the Gothic Castle by a straight road; but being driven off the high-way is jostled and robbed in the cross roads and bye-lanes through which he is obliged to advance.

And this is what GANGETICUS recommends to the people of India; but he has a great deal to do yet, before he will prove that the European, on its present footing, is a jot better than a Native Bar. The comparison to be decisive must be drawn between the European Attornies, the necessary appendage of a European Bar, and our Pleaders and Mookhtyars. At home, Counsel starve, while Attornies thrive in an astonishing manner.

I am not prepared to contend that the idea of a European Bar under certain modifications might not be adopted with great advantage in the *Sudder Dewanny Adawlut*: all I contend against is, the chicanery of Special Pleading, and the middle-men, called Attornies. The short cuts and bye-ways, like the *Punchayet* and Assize systems, if incompatible with the perfectibility of Law, a proposition which I stoutly deny, are at all events peculiarly adverse to the thrifty trade of a Lawyer.

The simple System of Indian Jurisprudence, is probably not destined to survive the attacks of its enemies; but it is well worth any man's while to enter the lists. I should rejoice to see some individuals better qualified for the task than myself, take up the subject with GANGETICUS; because I think his opinions hostile to the peace and happiness of Indian societies.

Mr. Elphinstone's idea of invigorating the System, is admirable and worthy so able and excellent a man; but with great deference I would remark that he appears to have over-rated the objections to the *Punchayet*, and on the other hand to have underrated those that are to be made to our own.

And, first, of the Native System, it is said that there are no certain means of filing a suit.

Theoretically, this is an objection of no weight: Justice may be done as well without regularly filing a suit as not. With the Natives, the examinations, &c. are *vivâ voce*, and it is not till the end of the proceedings that the particulars of the case are committed to writing. If the *Punchayet* refuse to do their duty, the Petitioner, it is true, would have no redress; but by a parity of reasoning we may suppose Judges or Juries corrupt, or influenced by caprice. In that case the mere filing will be of little avail. The second objection, regarding Appeals, arises from a misconception of the nature of primitive jurisprudence. In England there was formerly no regular Appeal, points of law more difficult than usual would naturally be subject to revision, under any Government whatsoever.

An appeal of facts is a modern invention, arising out of the practice of shutting the Jury up in a box, supposing them to drop down from heaven without any previous knowledge of the facts at issue. Bills of exceptions, and the doctrine of new trials, illustrate this subject. Under the ancient law the remedy was by

attain; and the reason of it seems to be this, that as the *inquest* was held on the spot, and as false witnesses could not be passed off on Judges so well able to judge of the facts, therefore a false verdict and a corrupt verdict were in fact and in practice one and the same thing.

Another objection is that the Panchayet is slow in its operations. This is really a little too much, considering that men, women, and children, in our own Provinces, are all complaining, and most justly, of the delays in the administration of Justice. With us the delay originates in the forms and process by which we carry the law into effect: but how delay should be chargeable upon the Panchayet, in the great majority of cases, it is difficult to conceive. If the abuse had any existence in fact, it probably originated in the undue influence of the Officers of Government; and we may therefore hope that it will be entirely removed under the new System of things adopted at Poonah.

It is objected to the Panchayet that their decrees were not executed. This is certainly a fatal abuse, but it must have originated in want of vigour in the Government. In no part of the world is this objection more frequently or more justly urged than on our side of India. On this point I refer GANGETICUS to a Report made by the Sudder Dewanny Adawlut, on the subject of decrees, every word of which is true, and remains true to this day. These facts only shew the weakness of such arguments as those that are usually had recourse to by the enemies of the Panchayet System. At this rate our own System ought immediately to be abolished, as open, in an eminent degree, not only theoretically but practically, to most of the objections which have been urged against the Panchayet.

The argument of uncertainty, is, of all objections that I have ever heard against the Panchayet System, the most frivolous and unsound. With the caprices of the Government we have no concern, as they involve an extraneous evil with which the Panchayet System has nothing to do. On this subject Mr. Elphinstone thus expresses himself: "Even when the decree of a Panchayet was passed and executed, one would think it must, from the way in which the assembly was constituted, have had little good effect beyond the case it had tried: for as there is no written law, and as Panchayets were composed of men of different habits and conditions, their awards must be supposed to have varied, so as to afford no great certainty beforehand as to the decisions to which any Panchayet would come; and this uncertainty must have led unceasingly to new litigations."

Amongst the simple Nations of the East, the greater number of cases turn upon issues in fact. To such causes therefore Mr. Elphinstone's remark does not apply; neither does it in any way appear necessary that the Panchayet should be ever informed of the particulars of the judgement given by former assemblies in similar cases. The doctrine of precedents is, I believe, peculiar to the English law.

This remark has evidently originated in the idea, that because people are perplexed with precedents by the English lawyers, therefore the same is the case elsewhere. Neither can a common case be conceived in which the Panchayet should fail in interpreting the law: so simple is the nature of the code. In questions of caste, the custom of the place would be sufficient to enable them to decide. In these cases the awards of former arbitrators would naturally have become a part of the customary law, with which their successors would not be unacquainted. One observation in the passage quoted above is so extraordinary as to induce a suspicion that Mr. Elphinstone is in error. He seems to think that there was no written law: if such be the fact, it clearly shews that the Poonah States are not so far advanced in civilization as other parts of India. In Mythula (Tirhoot) and in Bengal, the customary law of the land has for centuries been both traditional and written. By the word *traditional*, I understand those customs which have not been committed to writing. I question, however, whether such customary law is to be met with very frequently in practice. The treatises on Inheritance, and the general treatises on Jurisprudence, prove how early the laws are reduced to writing; and if the Poonah States are without any such books, it is a most curious circumstance in their history.

The most important objection taken to the Panchayet, is that they are open to corruption. In theory, it is usual to suppose the Judges impartial; neither is it at all a fair way of objecting to a System by arguments *a priori*, which, to say the least of them, are negative in their nature, all Systems being open to them.

The argument is wholly one of degree, and depends entirely on the quantum of moral feeling in the community, and must ultimately be grounded on facts. The legitimate way of stating such an objection would be to take a given number of awards for a given number of years, leaving the Public to draw their own conclusions.

If a whole nation are to be supposed open to corruption, merely for the purpose of opposing a System, I really do not see that it matters much what System is adopted.

The objection must be understood, as vitiating the generality of decisions, otherwise it is of no weight. The argument of corruption, if it proves any thing, proves too much for this side of India: at this rate, the Moonsiffs, and those compounders of felony, commonly called *Darogahs*, ought to be discharged, as infinitely more corrupt than the Panchayet.

In Bengal, the Panchayet is not now known to our laws; but it still frequently obtains amongst the people, before they come in contact with our institutions.

Such awards I have seen, and have always found them, as far I could understand, just; though usually at variance with our Ameen reports, and Cutcherry witnesses. The instances are necessarily few in number; but they are sufficient to induce me to hesitate before I assent to a doctrine which assumes the Panchayet, as a body, to be open to corruption. One case, I remember, was very decisive on this point; but not having the papers by me, I am unable to give the particulars. The Ameen's report had been completely and satisfactorily upset on an examination of the Zemindarry chittahs; and in the course of the altercations between the parties, it came out that the Panchayet had, in this case, recommended to them a division of the land, exactly the same as what afterwards was considered a just disposition of the property in dispute. I afterwards summoned witnesses to prove the fact of the award, intending to confirm it, but left the district before the case was decided.

The most important distinction between the two, seems to be this, that whatever may be the defects of the Panchayet System in common with our own, for to all those mentioned by Mr. Elphinstone, ours is obnoxious, the Native System neither promotes litigation, nor along with it forgery and subornation of perjury.

Formerly there was much less of these things than at present: the leprosy of wickedness that infects those who attach themselves to our institutions, did not in the early period of our Government exist. Legal chicanery and deception, are subsequent to the year 1780, an era important in the history of our Government, not so much because it was the period of change, for that appeared to be somewhat necessary, but because the remedy then applied has in its consequences proved worse than the disease it was originally intended to cure. All they seemed to require, was system and regularity, which might have been brought about, without all the flummery of Special Pleading and regular Pleadings.

Some most satisfactory cases might be cited in proof of this position. I do not feel myself at liberty to publish Public Records without permission; otherwise I could cite the general method of transacting business in former times, that would convince GANGETICUS: formerly every thing was clear and easy; men might take advantage of their situations, but oaths and perjured witnesses did not annihilate the law.

This change the Natives attribute to fixed Pleadings, who become so intimately versed in all the arts of chicanery and fraud. There is a low sort of a Satire, written many years ago in Nattore, which begins "Bela holo dos dono" the object of which is to ridicule the appointment of Regular Pleadings.

To Sir Elijah Impey we are indebted for this system of practice, which is neither that of the Common Pleas, nor the



King's Bench; and why should we expect the result to be other than it is in England, and every where else?

Mr. Elphinstone justly remarks, that "the subsistence of these men depends on the abundance of law suits," hence they promote litigation, and stir up quarrels amongst the people. Our Regulations declare, "that when a suit is amicably settled, before the case has been submitted to the Court, in other words before the parties have joined issue, that the Pleaders shall only have half their fees." This surely is reasonable enough, but in practice it is found to produce an effect contrary to that which is contemplated in the Law. The rule operates as a bounty on litigation.

In former times, in England, they seem to have been strongly impressed with the necessity of limiting the number of Attornies; the following extract is curious, as it shows the temper and feeling of the people of those times on the subject.

"The number of Attornies has much increased within the last three centuries; for an Act of Parliament passed in the 33d. Henry VI. c. 7. states, that not long before that time there had not been more than six or eight Attornies in Norfolk and Suffolk, *quo tempore (it observes) magna tranquillitas regnabat*; but that the number had increased to twenty-four, *to the great vexation and prejudice of these counties*. It therefore enacts that for the future there shall only be six Attornies in Norfolk, six in Suffolk, and two in the city of Norwich. As it does not appear that this statute was ever repealed, it might be curious to enquire how it was originally evaded."

If Native Attornies were as honorable in their feelings, and as just in their ideas of the nature of the trust reposed in them, as the Judges of our Courts of integrity,—was their chief virtue,—then no man could object to Special Pleading and fixed regular Pleaders. Unfortunately, experience does not justify so charitable a view of human nature in our Courts: it is so bad, that GANGETICUS himself will probably not quarrel with my argument so far as it applies to Native Pleaders.

In England, the Legislature have repeatedly interfered. Amongst other admirable rules of the science of pleading is this, "That when there are a number of issues joined in a cause, one of which decided in favour of the plaintiff, of itself determines the cause, such issue should be first disposed of;" and yet how often in practice do we see this equitable and logical principle departed from for the mere purpose of multiplying law trials. Far be it from me to reject the study of the science. It should be cultivated by all Judicial men: they would then be better able to direct their attention to the really important issues: they would see where the law of itself decides a point without trying issues in fact, which generally gives rise to perjury on both sides. In Wills for instance the law is of itself sufficient in most cases, and half an hour is as much as is required in the great majority of cases.

All I contend against is the abuses of the System, and to these I would most earnestly direct the attention of GANGETICUS.

What the technical difficulties of our Laws may be, it would, I apprehend be difficult for any Judicial man to point out. We have no fictions; neither have we introduced any thing beyond the abuses of Special Pleading into our System: to the science of the thing we pay but little attention.

A regular establishment of Pleaders is quite unnecessary; neither do the parties, in the majority of cases, make any use of the rejoinders, &c. In general, issue may be joined after the reply.

The only plausible objection that can be urged to dispensing with the regular establishment of Pleaders, is, that the delays in the Administration of Justice are so great, that the *suitors* could not afford to be so long from their homes. There is no reason, however, why they should not appoint some neighbour or friend to transact the business for them. The people, as we know them through the Pleaders, are widely different from the people, as we know them in their Villages, and before they have had the benefit of *English principles*. Require a Village Putwary to produce his accounts on the spot, and the very first entry is frequently decisive against him. Call for the same papers through a Pleader, and

they are burnt, or lost, or not forthcoming, or the Officer of Account absconds. Is it not a notorious fact that the Ameens draw up their Reports in communication with the Sudder Pleaders? Do they not afterwards alter the *whole of their papers*, so as to make them tally with the Report? For all this we are indebted to regular Pleaders.

I require no material alterations in the existing Laws: allow people to employ whom they please; regular Pleaders will soon disappear, and with them all the chicanery and fraud that they have created. This must be the first step towards any radical improvement in the present System. The regular Pleaders are not better acquainted with the Native Laws than any other Natives; and matters of fact can be inquired into as well by common individuals unconnected with the Courts, as by the regular Pleaders.

1st. As I hinted in my first Letter, let the process be rendered more summary: causes may then be decided within a reasonable time, and suitors will find no difficulty in attending themselves. At present a cause that ultimately, when judgement is given, only occupies the Court an hour, has been on the file for a twelve-month.

2nd. The subject of Appeals is also worthy of attention: this right should not be curtailed; but the parties might be required to put in "Appeal Bail" in the course of the day—otherwise the writs of execution should issue. Such an arrangement would tend to deprive the Omlahs of much of their influence, as they would have little time to tamper with the Suitors. The additional delay of one month is unnecessary: how do people manage in England where the writ of error, to amount to a *superseas*, must be sued out immediately?

3rd. Some rule should be made to compel the Judicial Officers to decide a given number of Appeals per month.

4th. I would propose that European Gentlemen should draw up a report in detail of every case decided, shewing the grounds of the decree, the pleadings, issues, &c. These Report Books the Judge of Circuits should examine, and the Government might occasionally call for them, as a decisive criterion of the abilities of Individuals. Something of this sort would do more for the country than any thing else.

5th. Supernumerary Judges might be placed at the disposal of the Courts of Appeal, to be sent round to clear off heavy files in the dependant Zillahs.

7th. A European Bar for the Sudder Dewanny. The Court would then be able to exercise a more vigilant and efficient superintendence over the inferior Jurisdictions.

To effect this, it should be stationed out of Calcutta, in a more central position. People would then escape from the Lawyers. I have heard many respectable Natives lament that they should be driven into the "City" to get Justice.

The European Gentlemen to practice at this Bar should be selected from the Army and Civil Service;—and should be composed of persons skilled not only in the languages, but literature and learning of the East.

This would open a fine field for men of ability in the Indian Army. The Natives would then have their own Laws in all their perfection. The Law Officers of the Courts would not dare to give false decisions. The abilities of men in the Army are at present not available.

The principal Mussulman treatises might soon be translated into Persian. In fact, the Hedayah is sufficient for all the purposes of Mohamedan Jurisprudence.

The Sanscrit would be studied with zeal when the Student had some practical object in view: 12 or 14 persons would be sufficient for the purpose. They might carry on the business without Attornies.

A Native would have some satisfaction in being referred to such men as Lockett and Fell, and P. M. Wynch. The Army abounds in highly gifted individuals; and why not make use of their talents in the cause of Justice and Humanity?

In order to prevent the country from being pillaged, as it is at present, these Gentlemen might be required at the end of every cause to give an account of all monies received; which bill, after being approved by the Court, might be sent to the Zillah Judge, to be by him shewn to the Zemindar, who should be summoned for that purpose. This arrangement would prevent that execrable system of swindling, that is now carried on by the middle-men.

I would also require every Barrister so employed to give an impartial opinion to his Client; which opinion should be filed in the cause. It would necessarily have no effect on the Judges, but it would prevent the men of the law from wheedling the people out of their money, until there was nothing more to be got. It is the duty of such men to give a fair opinion, and there can be no injustice in compelling them to do their duty.

Gentlemen perhaps are not in the secret of the thing; but at first a Lawyer never gives you a decisive opinion. After the business has gone on for some time, the Client is told his case is hopeless,—had better refer it to arbitration,—nothing to be expected from the Court.

If people were properly advised, at first, there would be few lawsuits.

The opinion of Counsel too is often taken in a most objectionable manner. He is frequently asked, not whether the suit should be prosecuted, but whether the parties should proceed by indictment on information: and after all the unnecessary expense, the thing is dropped at the suggestion of some impartial friends.

The question of Colonization will never be conceded to GANGETICUS; and I therefore recommend my plan for his consideration. One thing I must observe, he has not understood this part of my argument; it has nothing to do with the eternal distinction between rich and poor, neither can he justly refer me to such a country as Ireland, where ages of bad government have reduced the people to their present state, where a great mass of the people are obliged to "support" two Ecclesiastical establishments, besides besides, paying the landlord his rent, and the tax-gatherer his taxes.

This, though it may trench on the rent of the landlord, must also reduce the profit of the cultivator. I refer him to America, where my principle is in full force: he opposes to me the refinements and pleasures of modern society in Europe; but I told him before that in that *extreme* we had the advantage. Let him first dispose of all the misery generated by Foundling Hospitals, and the Poor Laws, together with the unequal distribution of property, and I will then admit that there is some justice in what he says. With regard to the theological difficulty noticed by GANGETICUS in the last paragraph, I must leave him to obviate it as well as he can. It has been justly observed by a writer, Madame de Staël, whose piety cannot be doubted "that the Book of Nature is contradictory; that we see there the emblems of good and evil in almost equal proportions."

The observation objected to, occurred only as a corollary to the general view I had taken of the subject. To deny the existence of evil would be preposterous indeed; but that view of society which sees more good than evil in the *natural* order of things, is calculated to diminish the force of the difficulty referred to in the passage quoted above. Whereas the arguments of the Missionaries, and those who look upon the Statistical Book of India in the same light as GANGETICUS, are calculated in an eminent degree to increase the weight of it. Looking to proximate causes, I contend that many of the evils that prey upon civil society arise from bad government and the mania for legislation, which can never leave institutions in their natural state. If I might be permitted the use of the expression, I would say there is less evil purely *natural* than people are disposed to admit; much that we confound with it being *political*, having its origin in the nature of the Civil institutions which Governments in their legislative restlessness thrust upon the world. If society was left to itself, to adopt that System which necessity and expediency point out, as in all the countries of the East, mankind would be much more peaceable and less litigious. Thus we found the Natives in the

Western Provinces; but with the progress of Magna-Charta-ism and "Special Pleading," they also are rapidly becoming as vicious and unprincipled as the Natives of Bengal, who seem to be so popular just now in Calcutta. We set a premium on villainy, and then wonder at our own success. Too much Law is as bad as too little: in practice they come to nearly the same thing. Every day's experience in this country, furnishes proof of the truth of this position, howsoever paradoxical it may seem.

Moorshedabad, Sept. 11, 1821.

A CIVILIAN.

### Parting Words.

*Adhering to our resolution of avoiding unnecessary and unavailing Controversy, we must yet do one of our Contemporaries the justice to acknowledge his favor, by inserting the following detached paragraphs from the HURKARU of yesterday, the only ones for which we can find room:—*

*From the Correspondent of the Hurkaru, C—.*

"I cannot express to you the satisfaction I feel at the temper evinced by the JOURNAL on this occasion, and will only observe, that if he at all times conducted his attack and defence in the way which he has in this instance pursued, it would not only attach greater weight to his arguments, but certainly increase the personal consideration due to himself.

"I regret that the JOURNAL having written his Self-Defence with so much temper, should still misrepresent me.—I do not doubt that the Court of Proprietors are unanimous in their Opinion of the Value of a Free Press in India; and I can assure the JOURNAL, that I am at least as sensible as he can be of its value—but that has nothing to do with the policy of the Power of Transmission.

"The long paragraph respecting the restoration of the Censorship is totally irrelevant. No one does advocate such restoration—There cannot surely exist any Englishman who would not deprecate such a restoration, as one of the greatest public misfortunes.

"The remainder of the Article does not require any notice; and I now for the present take leave of the JOURNAL; and assure him, that the temper he has evinced in this Self-Defence has afforded me much pleasure and gratification, and I sincerely hope that he will continue so to defend himself; and on all occasions of argument confine himself within the same bounds of temper and impersonality, which distinguish his last Paper."

*From the Editor of the Hurkaru.*

"We cannot withhold our meed of praise for the tone and temper of the JOURNAL'S Self-Defence of yesterday, and it would indeed be most gratifying to us, if he would always act thus.

"Nothing can possibly more tend to maintain the respectability of the Calcutta Press, than such conduct; and he ought to know that even if he is not met by a corresponding temper, that the advantage will, by contrast, be doubly his own."

*Be it so:—and let the Public henceforth judge between us all. We have risen by THEIR assistance—we stand by THEIR support—and we are willing to meet the issue of THEIR award, be it to crown our triumph, or to rejoice over our fall.*

### Birth.

On the 22d instant, the Lady of R. C. BLUNT, Esq. of a Son.

### Deaths.

On Sunday, the 23d instant, ALICIA, aged 37 years, the wife of WILLIAM LEYCESTER, Esq. of the Civil Service. Her many virtues—her sense of religion—her practical devotion—the sympathy she ever felt in the sorrows of others—her exertions to soothe and relieve them—the deep regrets of her many valued friends and relatives—her exemplary conduct in every vicissitude of life—the kindness of her domestic habits—her unceasing maternal vigilance—the unshaken confidence and affection which ever united her to the bosom of a grieving Husband—afford him the strongest hope under heaven, that through the mediation of our Blessed Saviour and Redeemer, she may be received into bliss eternal, and happiness for ever.—Amen!

On the 24th instant, at Dr. CAREY'S Residence, Bow Bazar, Mr. BENJAMIN CLARK, late of the Serampore Seminary, aged 17 years.

On the 25th instant, WILLIAM JONES, Esq. of Seepore, aged forty-four years.

On the 23d instant, Mr. R. B. BARTO, aged 23 years.